

H. C. R. No. 4, Requesting the Governor of Texas to call a conference of Governors of the cotton-growing States.

H. C. R. No. 5, Protesting the proposed 15 per cent increase in freight tariff by the Interstate Commerce Commission.

Respectfully,
BOB BARKER,
Secretary of the Senate.

CONCERNING THE PRESENTATION OF THE FLAG OF GREECE.

Mr. Holland offered the following resolution:

Whereas, Texas citizens of Grecian extraction, in co-operation with the American Legion, will present to the State of Texas a flag of Greece, such presentation to take place on the south steps of the Capitol at 10 a. m., this date; therefore, be it

Resolved, That the House of Representatives stand at ease from 9:55 a. m. to 10:20 a. m. and go in a body to the ceremonies.

The resolution was read second time, and was adopted.

COMMITTEE OF THE WHOLE HOUSE.

(Mr. Minor in the chair.)

On motion of Mr. Hardy, the House, at 10:30 o'clock a. m., resolved itself into a Committee of the Whole House for the purpose of further investigating the oil industry.

IN THE HOUSE.

(Mr. Minor in the chair.)

At 6:25 o'clock p. m., Mr. Minor, Chairman of the Committee of the Whole House, reported to the House that the Committee desired to rise, report progress and ask leave to sit again at 9 o'clock a. m. next Monday.

ADJOURNMENT.

On motion of Mr. Hardy, the House, at 6:25 o'clock p. m., adjourned until 9 o'clock a. m. next Monday.

EIGHTH DAY.

(Monday, July 27, 1931.)

The House met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Speaker Minor.

The roll was called, and the following members were present:

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| Mr. Speaker. | Hoskins. |
| Adams of Harris. | Howsley. |
| Adams of Jasper. | Hubbard. |
| Adamson. | Hughes. |
| Adkins. | Jackson. |
| Akin. | Johnson |
| Alsup. | of Dallam. |
| Anderson. | Johnson |
| Baker. | of Dimmit. |
| Barron. | Johnson of Morris. |
| Beck. | Jones of Shelby. |
| Bedford. | Jones of Atascosa. |
| Bounds. | Justiss. |
| Boyd. | Kayton. |
| Brooks. | Keller. |
| Bryant. | Kennedy. |
| Burns | Laird. |
| of McCulloch. | Lasseter. |
| Carpenter. | Lee. |
| Caven. | Leonard. |
| Claunch. | Lilley. |
| Coltrin. | Lockhart. |
| Cox of Lamar. | Long. |
| Cox of Limestone. | McCombs. |
| Cunningham. | McGill. |
| Dale. | McGregor. |
| Daniel. | Magee. |
| Davis. | Mehl. |
| Dodd. | Metcalfe. |
| Donnell. | Moffett. |
| Dowell. | Morse. |
| Dunlap. | Murphy. |
| Engelhard. | Nicholson. |
| Farmer. | O'Quinn. |
| Farrar. | Ramsey. |
| Ferguson. | Ratliff. |
| Finn. | Ray. |
| Fisher. | Reader. |
| Forbes. | Richardson. |
| Ford. | Rogers. |
| Fuchs. | Rountree. |
| Gilbert. | Sanders. |
| Giles. | Satterwhite. |
| Goodman. | Savage. |
| Grogan. | Scott. |
| Hanson. | Shelton. |
| Hardy. | Sherrill. |
| Harman. | Smith of Bastrop. |
| Harrison | Smith of Wood. |
| of El Paso. | Sparkman. |
| Hatchitt. | Steward. |
| Hefley. | Strong. |
| Herzik. | Sullivant. |
| Hill. | Tarwater. |
| Holder. | Terrell |
| Holland. | of Val Verde. |
| Holloway. | Towery. |

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| Turner. | Warwick. |
| Van Zandt. | West of Coryell. |
| Vaughan. | West of Cameron. |
| Veatch. | Westbrook. |
| Wagstaff. | Wiggs. |
| Walker. | Young. |

Absent.

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| Graves. | Patterson. |
| Greathouse. | Petsch. |
| Harrison | Pope. |
| of Waller. | Stevenson. |
| Lemens. | Terrell |
| Martin. | of Cherokee. |
| Munson. | Weinert. |
| Olsen. | |

Absent—Excused.

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| Albritton. | Dwyer. |
| Bond. | Elliott. |
| Bradley. | Hines. |
| Brice. | McDougald. |
| Burns of Walker. | Mathis. |
| Coombes. | Moore. |
| DeWolfe. | Stephens. |
| Duvall. | Wyatt. |

A quorum was announced present.

Prayer was offered by the Rev. John W. Holt, Chaplain.

LEAVES OF ABSENCE
GRANTED.

The following members were granted leave of absence on account of important business:

Mr. Albritton for today, on motion of Mr. Akin.

Mr. Burns of Walker for today, on motion of Mr. Daniel.

Mr. Elliott for today, on motion of Mr. Goodman.

Mr. DeWolfe for today, on motion of Mr. Boyd.

Mr. Rogers for today, on motion of Mr. Vaughan.

Mr. Mathis for today, on motion of Mr. Adams of Harris.

Mr. Brice for today and tomorrow, on motion of Mr. Cox of Lamar.

Mr. West of Cameron for today, on motion of Mr. Sherrill.

Mr. Patterson for today and the balance of the week, on motion of Mr. Minor.

Mr. Dwyer for today, on motion of Mr. Nicholson.

Mr. Stephens for today, on motion of Mr. Dowell.

Mr. Wyatt for this morning, on motion of Mr. Jones of Atascosa.

Mr. Bond for today and the balance of the week, on motion of Mr. Minor.

Mr. Coombes for today, on motion of Mr. Ferguson.

The following members were granted leave of absence on account of illness:

Mr. Hines for today, on motion of Mr. Adkins.

Mrs. Moore for today and the balance of the week, on motion of Mr. Farrar.

HOUSE BILLS ON FIRST READING.

The following House bills, introduced today, were laid before the House, read severally first time and referred to the appropriate committees, as follows:

By Mr. McCombs:

H. B. No. 18, A bill to be entitled "An Act to conserve water supplies and prevent the pollution of sources of domestic water supplies for cities, towns and villages; prescribing a penalty, and declaring an emergency."

Referred to Committee on Conservation and Reclamation.

By Mr. Daniel, Mr. Barron, Mr. Young and Mr. Wagstaff:

H. B. No. 19, A bill to be entitled "An Act to amend Chapter 36 of the Fifth Called Session of the Forty-first Legislature, and particularly Section 11 thereof, and by adding Section 11a and Section 11b thereto, enlarging the powers and duties of the Railroad Commission of Texas with reference to conservation, transportation, storage and purchase of petroleum and its products in this State; designating as public utilities the owners, operators and managers of oil storage tanks and storage facilities for the public hire; forbidding discrimination by such public utilities; providing for a bond to be filed by such public utilities; giving to the Railroad Commission of Texas jurisdiction over rates, rules and regulations governing the storage of crude petroleum and its products by such public utilities, the character of facilities to be furnished, the forms of receipts to be issued, and the inspection, grading, measurement, deductions for waste, deterioration and delivery by such utilities; giving such utilities a lien for charges; providing for the filing and posting of monthly statements by such public utilities, and by common carriers by pipe line;

vesting in the Railroad Commission of Texas jurisdiction to authorize and require common carriers by pipe line and public utilities, as defined by this act, to extend and enlarge their respective facilities under certain conditions, etc., and declaring an emergency."

Referred to Committee of the Whole House.

By Mr. Cox of Limestone and Mr. Farmer:

H. B. No. 20, A bill to be entitled "An Act defining unfair discrimination and prohibiting any person, firm, company, association or corporation engaged in the production, manufacture, sale or distribution of any commodity in general use in this State from discriminating between different sections, communities, incorporated cities or towns of this State, for the purpose of destroying the business of a competitor in any locality, or for the purpose of fixing, maintaining, increasing or reducing the price of such commodity by selling or distributing such commodity, or permitting the sale or distribution of such commodity, at different rate or price in one section, community, incorporated city or town, after making due allowance for the difference, if any, in the grade or quality, in the actual and necessary cost of transportation paid by the seller or distributor of said commodity and the reasonably necessary difference, if any, in the cost of marketing said commodity; making certain facts prima facie evidence of unfair discrimination, etc., and declaring an emergency."

Referred to Committee on Criminal Jurisprudence.

By Mrs. Rountree, Mr. Engelhard, Mr. Harrison of Waller, Mr. Carpenter, Mr. Ford, Mr. Lilley, Mr. Ray, Mr. Tarwater, Mr. Wagstaff, Mr. Kennedy, Mr. Ratliff and Mr. Fuchs:

H. B. No. 21, A bill to be entitled "An Act amending Section 5 of Chapter 15, Local and Special Laws, Acts of Second Called Session, Forty-first Legislature, relating to the creation of the Brazos River Conservation and Reclamation District and the establishment of the boundaries thereof; reappropriating for said purpose the unexpended balance of \$20,000 appropriated for said purpose by Chapter 35, etc., and declaring an emergency."

Referred to Committee on Conservation and Reclamation.

TO MEMORIALIZE PRESIDENT HOOVER TO CALL AN EXTRAORDINARY SESSION OF CONGRESS.

Mr. Bryant offered the following resolution:

H. C. R. No. 6, To urge President Hoover to call a special session of Congress.

Whereas, Money is the great instrument of association, the fiber of social organism and the vitalizing force of industry, without which civilization could not have had a beginning; its increase and decrease the tide in human affairs upon which all things must rise or fall; and

Whereas, It matters not how great the natural resources of a country may be; how genial its climate, fertile its soil, ingenious and enterprising its inhabitants; if the supply of money or money substitute is shrinking or withheld from circulation, prices will fall, its merchants overwhelmed with bankruptcy, its industries paralyzed, its citizens out of employment, and destitution and distress will prevail; and

Whereas, Those who framed our Federal Constitution, understanding the evil effects of a fluctuating currency—knowing that a change in the supply alters the price of every pound and yard of merchandise and every foot of land, were unwilling to entrust this power to any other agency than the chosen representatives of the whole people; denied this power to the States, charging Congress with the responsibility of coining and regulating the value of the dollar; and

Whereas, Congress has delegated this power—the greatest power that could possibly be exercised by man—to selfish private corporations, making them absolute dictator of all business and finances of the whole country; and

Whereas, This power has imposed upon the people conditions that have drained the wealth of the country into the hands of the few; enhanced the value of their securities and their incomes beyond precedent; while depressing prices of all products until the burden of debt and taxes has been more than doubled; perpetrating the greatest injustice ever done a free people; and

Whereas, It is a physical impossibility for the people to pay their debts and taxes with low-priced products

and unemployment as now existing; and

Whereas, It is impossible for State Legislatures to provide a remedy for low prices, nor for private enterprises to furnish employment for the unemployed, which condition threatens untold physical suffering and privation for millions and bankruptcy for others to the extent as to threaten the stability of our government and of civilization; therefore, be it

Resolved by the House of Representatives, the Senate concurring, That the Legislature of the State of Texas memorialize President Hoover to call an extraordinary session of Congress at a very early date that it may again assume the power, duty and responsibility of controlling the volume and the value of money, restore it to a value approximating its value at the time our debts were contracted, and so regulate the same that it may not work a repudiation of debt nor a confiscation of property; thereby correcting the evils complained of and preventing the threatened calamity.

Resolved further, That the Secretary of State be instructed to mail a copy of this resolution to President Hoover and a copy to each Texas member of Congress and of the Senate.

BRYANT,
McGREGOR.

The resolution was read second time.

On motion of Mr. Keller, the resolution was referred to the Committee on State Affairs.

REQUESTING GOVERNOR TO SUBMIT CERTAIN SUBJECT FOR LEGISLATION.

Mr. Cunningham offered the following resolution:

Whereas, There exists a great indebtedness by various counties of Texas, due to voting by them of bonds for construction of highways in said counties, which highways are now maintained by the State, and for which said counties are paying more than their share of the road building program because of said indebtedness and the additional gasoline tax, motor tax and various other traffic taxes imposed upon them; and

Whereas, At the General Session of the Forty-second Legislature efforts

to award relief for these counties were sought by bills and resolutions introduced, all of which failed of passage, some in the House and some in the Senate; and

Whereas, Tax payments are almost unbearable to the people of Texas at this time and the fact that there exists great demand for relief, and that the people are suffering for such relief in many counties of Texas; now, therefore, be it

Resolved, That the members of the House of Representatives hereby request the Governor of this State to submit to the Legislature now in extraordinary session assembled, a proclamation sufficient to entitle the introduction of some measures, similar in character to the Stevenson bill or the Brooks bill, as same were before the Regular Session of the Forty-second Legislature, that the people of Texas may have the relief sought to be given by said bills and the road bond resolution for reimbursements to the counties and the assumption of their indebtedness as contemplated and as attempted in said measures.

CUNNINGHAM,
BROOKS,
LEONARD,
WIGGS,
MOFFETT.

The resolution was read second time.

Question recurring on the resolution, yeas and nays were demanded.

The resolution was adopted by the following vote:

Yeas—81.

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| Adams of Jasper. | Dunlap. |
| Adamson. | Engelhard. |
| Adkins. | Farmer. |
| Akin. | Farrar. |
| Alsup. | Ferguson. |
| Anderson. | Finn. |
| Baker. | Fisher. |
| Barron. | Forbes. |
| Bounds. | Ford. |
| Boyd. | Fuchs. |
| Brooks. | Gilbert. |
| Bryant. | Giles. |
| Carpenter. | Goodman. |
| Coltrin. | Grogan. |
| Cox of Lamar. | Hanson. |
| Cox of Limestone. | Hardy. |
| Cunningham. | Harman. |
| Dale. | Harrison |
| Daniel. | of El Paso. |
| Dodd. | Hatchitt. |
| Donnell. | Hefley. |

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| Herzik. | Murphy. |
| Holder. | Ramsey. |
| Holloway. | Ratliff. |
| Hoskins. | Ray. |
| Hubbard. | Richardson. |
| Johnson | Satterwhite. |
| of Dallam. | Scott. |
| Johnson | Sherrill. |
| of Dimmit. | Smith of Bastrop. |
| Johnson of Morris. | Smith of Wood. |
| Jones of Atascosa. | Sparkman. |
| Justiss. | Strong. |
| Kennedy. | Towery. |
| Lasseter. | Turner. |
| Lee. | Vaughan. |
| Lilley. | Veatch. |
| Lockhart. | Walker. |
| Long. | West of Coryell. |
| McGill. | Westbrook. |
| McGregor. | Wiggs. |
| Mehl. | Young. |

Nays—20.

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| Adams of Harris. | Magee. |
| Beck. | Morse. |
| Bedford. | Nicholson. |
| Burns | Reader. |
| of McCulloch. | Savage. |
| Davis. | Steward. |
| Hill. | Sullivant. |
| Holland. | Van Zandt. |
| Hughes. | Wagstaff. |
| Keller. | Warwick. |
| McCombs. | |

Present—Not Voting.

Tarwater.

Absent.

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| Caven. | Moffett. |
| Claunch. | Munson. |
| Dowell. | Olsen. |
| Graves. | O'Quinn. |
| Greathouse. | Patterson. |
| Harrison | Petsch. |
| of Waller. | Pope. |
| Howsley. | Rogers. |
| Jackson. | Rountree. |
| Jones of Shelby. | Sanders. |
| Kayton. | Stevenson. |
| Laird. | Terrell |
| Lemens. | of Cherokee. |
| Leonard. | Terrell |
| Martin. | of Val Verde. |
| Metcalfe. | Weinert. |

Absent—Excused.

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|------------------|------------------|
| Albritton. | Elliott. |
| Bond. | Hines. |
| Bradley. | McDougald. |
| Brice. | Mathis. |
| Burns of Walker. | Moore. |
| Coombes. | Shelton. |
| DeWolfe. | Stephens. |
| Duvall. | West of Cameron. |
| Dwyer. | Wyatt. |

RESOLUTION SIGNED BY THE SPEAKER.

The Speaker signed in the presence of the House, after giving due notice thereof and its caption had been read, the following enrolled resolution:

S. C. R. No. 3, In regard to Session Acts of the Forty-second Legislature.

INVITING SENATOR JAMES A. REED TO ADDRESS THE LEGISLATURE.

Mr. McGregor offered the following resolution:

Whereas, Senator James A. Reed of Missouri is one of the great men of the age in which he lives; is versed in the history of the human race; is familiar with the rise, existence and fall of the governments of man; possesses the developed and trained qualities of a tried and proven statesman; is a patriot of long and untarnished service in the cause of his country; is a lawyer of acknowledged and dominating ability; is an orator ornate lucid, logical, fearless and forceful; and

Whereas, Senator Reed has given much thought, time and labor in studying and analyzing the relation of trusts and monopolies to the rights and liberties of the American people, and is an outstanding and eminent authority on this great question; and

Whereas, Senator Reed during his entire public life has been a champion of the Americanism of the founders and fathers of this Republic; and

Whereas, the question of the relation of trusts and monopolies to the liberties and rights of the American people, and the perpetuity of this Republic is now a vital and pending question before the American people and must be met and dealt with as a major and controlling question; therefore, be it

Resolved, That Senator Reed be invited to address this House on the question of "Trusts and Monopolies" on any day agreeable to him, before the 6th day of August; be it further

Resolved, That the Clerk of this House is directed to wire this resolution to Senator James A. Reed at Kansas City, Missouri, and request him to accept this invitation.

McGREGOR,
SATTERWHITE,
GILBERT,
VAUGHAN,
DeWOLFE,
SAVAGE.

The resolution was read second time, and was adopted.

**TO PETITION THE INTERSTATE
COMMERCE COMMISSION IN
REGARD TO CERTAIN
FREIGHT RATES.**

The Speaker laid before the House, for consideration at this time, the following resolution:

S. C. R. No. 2, Concerning increase in freight rates.

Whereas, Agriculture and live stock raising are the basic industries in the State of Texas and have brought to the producers and workers in those industries a continuing series of losses during the past decade, due partly to other causes and partly to a combination of ever-increasing freight tariff combined with great distances from ultimate markets of the products of such industries, the costs of transportation of said products under said freight tariff schedules in many instances exceeding the market value of the agricultural or live stock commodity at destination; and

Whereas, The agricultural and live stock industries of Texas and the Southwest cannot fully recover from the distressed condition in which they now are in the absence of more favorable freight rates and tariffs for the commodities of such industries, and particularly is the condition at this time such as that a further increase in the freight tariff schedules on the products of the farms and ranches of Texas and the Southwest would be disastrous and would in effect absolutely deprive the farmers and stock raisers of Texas and the Southwest of their markets for their products; and

Whereas, During the past decade freight tariff schedules of the railroads of the Nation and of Texas and the Southwest have been constantly appreciated or increased until at this time they are generally higher than ever before and the market value of agricultural and live stock products, as well as every other commodity of trade in this country, have gradually depreciated or decreased until at this time they are at the lowest peak average in two decades, there being no response of freight rates and tariff schedules to the distressed market value of the commodity transported under said rates and schedules, with the attendant result that such rates

and schedules now are disproportionately high and are basically and economically excessive, and there being considered by the Interstate Commerce Commission of the United States at this time a joint application of the principal railroad transportation systems of the United States, including those operating in Texas, for an increase in the rates permitted to be charged by them for commodities transported, which 15 per cent rate increase is not only not justified under present conditions, but would prove to be disastrous to the agricultural and live stock interests of this State; therefore, be it

Resolved by the Senate of the State of Texas, the House of Representatives concurring, That we do, by these presents, petition, as the duly elected Representatives of the people of Texas and for them petition the Interstate Commerce Commission not to allow the 15 per cent general increase in freight rates and schedules as applied for by the common carriers of the country, and that we do respectfully urge the said Interstate Commerce Commission seriously to study conditions with the view of bringing about substantial reductions in the cost of transportation of agricultural and live stock commodities and products; and further

Resolved, That the Secretary of the Senate and the Chief Clerk of the House be, and they are hereby, instructed and directed, each of them, to send a certified copy hereof to each of the members of the Interstate Commerce Commission.

The resolution was read second time.

On motion of Mr. Sanders, the resolution was laid on the table subject to call.

**OPINION OF UNITED STATES
DISTRICT COURT HOLDING
PRORATION INVALID.**

The following was ordered printed in the Journal:

In the District Court of the United States for the Western District of Texas—Austin Division. No. 390 Equity.

Alfred MacMillan, Individually, and
Alfred MacMillan, Trustee, and
MacMillan Petroleum Corporation,
Plaintiffs,

vs.

The Railroad Commission of Texas, and C. V. Terrell, Pat M. Neff, Lon A. Smith and A. B. Capers, Defendants.

Saye, Smead, Wilson & Saye of Longview, Texas, Attorneys for Plaintiffs. C. L. Black, Amicus Curiae.

James V. Allred, Attorney General; Maurice Cheek, Fred Upchurch, Assistant Attorneys General, Attorneys for the Railroad Commission.

Morris S. Church, Robert E. Hardwicke, Attorneys for Defendant Capers; Conrad E. Cooper, Amicus Curiae.

Before Hutcheson, Circuit Judge, and West and Bryant, District Judges. Hutcheson, Circuit Judge:

This is a suit brought by citizens of another State against the Railroad Commission of Texas, seeking to have declared unreasonable, unjust and void, and to restrain the enforcement of, an order of the Commission issued by that body in April, 1931, as a part of a program first entered upon by it in August, 1930, to put into effect, in the oil fields of Texas, the plan of operation referred to in this suit and generally as "Proration."

Plaintiff, Alfred MacMillan, trustee, alleges himself to be the owner and operator of certain oil, gas and mineral leases in Gregg and Rusk counties, in what is known as the East Texas oil fields. That his wells there are capable of producing 50,000 barrels of oil a day. That he has contracted with his co-plaintiff, MacMillan Petroleum Company, the owner of oil refineries, pipe line systems, and other facilities in various fields to sell them large quantities of oil, and that company has in turn contracted with others for delivery to them of large quantities of oil, interstate and foreign.

He alleges that he is operating his properties skillfully and in such manner as to prevent waste, and to cause no injury to producing sands of adjoining properties. That he has been ordered by the Railroad Commission, upon pain of penalties and contempt actions to desist from operating his wells as he is now operating them, and to reduce the production therefrom to 1,455 barrels daily. That to do so would injure his wells, prevent

his complying with the drilling obligations of his leases, thus subjecting him to suit for damages for cancellation, and would prevent his complying with his contracts for sale of the oil, subjecting him to heavy resulting losses.

He asserts that the order is void, because (1) depriving plaintiffs of their properties without due process of law, and denying them the equal protection of the laws; (2) it impairs the obligations of contracts entered into by them; (3) it is an interference with interstate commerce; (4) the order rests not upon legislative authority or direction, and has no relation to the conservation of resources or the prevention of their waste, but is a mere arbitrary order designed to control the output, price and market of crude oil by reducing the supply of oil to the demand for it.

Plaintiffs further allege that these orders are being enforced against all operators in the East Texas field; that they are disastrously affecting market conditions in the field, and that adequate relief for plaintiffs requires that the orders be enjoined as to all operators in the field. It further alleges that plaintiffs sue for themselves and all other similarly situated who will join therein. The bill concludes with a prayer for temporary injunction pending suit, and for permanent injunction upon final hearing.

Upon filing of the bill in the Austin Division of the Western District of Texas, the statutory court was formed and the matter came on for hearing before that court on the application for temporary injunction. That hearing was continued until June 24, at which time upon the understanding that the court might act upon the application for temporary injunction before it reached its decision on the merits, the matter was on full proofs submitted to the court both on the application for temporary injunction, and on the merits.

By these proofs plaintiff established substantially as alleged, the facts as to his ownership and operation under leases of the properties in question, the contracts for sale of oil therefrom, interstate and foreign, the fact that the properties were being operated carefully and efficiently, and apart from the proration theory, in accordance with approved operating methods, without injuring the sands

of his neighbors. That he was keeping the actual output of his wells greatly below their potential. That the Commission's umpire had given him notice to reduce his production of oil to the amount alleged.

He specifically established the setting on foot by the Commission, in conjunction with committees of oil operators, of the proration plan, and the issuance of proration orders for the State of Texas, and for the East Texas oil fields as alleged. He further established in an overwhelming way by the recitations in the orders of the Commission of August 14 and November 24, 1930, January 23, April 4, April 22 and April 29 of 1931, by the testimony of Terrell, chairman of the Railroad Commission, and of members of the Oil Proration Committees, local and Central Advisory, by the testimony of each witness who took the stand, and by the letter of R. D. Parker, Chief Supervisor, Oil and Gas Division of the Railroad Commission of the State of Texas, that both the occasion and the compelling reasons for the establishment by the Railroad Commission of proration, originally and as now continued, were the disrupted and disorderly state of the oil business through the menace of overproduction.

Note 1:

Railroad Commission of Texas,
Austin, Texas, May 23, 1931.

**To All Purchasers and Transporters
of Crude Oil in the East Texas
Fields:**

To anyone acquainted with the situation in the East Texas district, it seems inevitable that present conditions cannot continue long without completely breaking up proration, with consequent disastrous results.

Several things, if done, would insure success, and we confidently believe can and must come from the purchasers and transporters of crude oil who handle the bulk of the production of Texas. Believing this, we insistently urge prompt action in the form of fair offers to buy prorated oil in substantial amounts and as near the posted price as possible and on that stabilized basis only, and immediate offers to make the necessary connections to take the oil. The effect of such a course is plain. Some purchasers have been holding back, we understand, to see whether prora-

tion is going to work, or for some such reason or fear. It is manifest that if a substantial number stand and wait, the movement must certainly fail for want of support.

We also earnestly request of the purchasing companies that only oil be purchased which has been produced in conformity with the Commission's order governing proration in East Texas, and we ask that transporting companies refuse to handle any oil not produced strictly in accordance with provisions of our order.

The Railroad Commission, hoping to be of real constructive public service, has given its support to proration as an official duty to perform, and will continue to do so until forced by circumstances to abandon hope of success. We urge you, therefore, to promptly and effectively move at once or we will be forced to admit failure and abandon the whole plan in Texas.

**THE RAILROAD COMMISSION
OF TEXAS.**

By R. D. PARKER,
Chief Supervisor, Oil and Gas
Division.

The evidence offered by the plaintiffs and by defendants made it plain that the real genesis of the plan and of the orders in question is to be found, and that they find their effective working only in coping with market demand.

That while the proration orders for East Texas were not based openly as elsewhere on nominations by oil purchasers as to the amount of oil they would agree to buy, they were, in fact, though covertly, based upon the same compelling consideration, the drastic reduction of output so as to bring it into relation with market demand. The Commission set about to accomplish this result in that field, (1) By fixing a low allowable production for each owner, not per well, but per unit of twenty and forty acres, in effect allowing the same production from each unit, whether it had one or ten wells upon it. Thus, with one stroke the Commission limited the output from existing wells and prevented further development by, in the language of one of defendants' counsel, "treating the owner as if he were a fool for having drilled four wells where one would be enough."

(2) After the fixing of the arbitrary allowable for the field, as one of the witnesses testified "so low as

definitely to be on the safe side," the Commission set on foot a supplicatory campaign among the purchasers and transporters of East Texas oil, earnestly entreating purchasers to buy proration oil in substantial quantities, and the purchasers and transporters to boycott all producers not complying with the Commission's order. (Parker's letter, Note 1, supra.)

Plaintiff further established that though there was evidence that the proration plan of ratable and moderate withdrawals would, if properly applied, have some effect to prolong the life of a field by delaying the intrusion of water and thus enable more oil ultimately to be obtained, in the light of present knowledge this was largely theory and speculation, and that such plan could not be properly applied in each field after careful test and experimentation there.

Plaintiff established that the allowable for the East Texas fields was fixed at an arbitrary basis, arrived at without test or experimentation, on plaintiff's property or in the field generally, as to the amount that might be safely withdrawn by each owner from his property causing any physical waste. He made it clear that the allowable had been fixed arbitrarily and that therefore the plan so adopted and promulgated had the same relation to physical waste as an order not pinching in, but shutting the wells down absolutely would have, differing from such an order not in kind, but only in degree. That the plan was therefore bound to result in arbitrarily depriving plaintiffs of the right to produce their oil in accordance with their prudent judgment and desire, without any precedent finding having been made that the amount which plaintiffs desired to produce would actually cause physical waste. Plaintiffs, in short, established that the only kind of waste which the orders are designed to and do deal directly with, is economic waste, the loss of market price because of market glut. That such effect, if any, as they might have to prevent not economic, but physical waste, does not come fairly within the purpose or effect of the order, but is a purely accidental incident thereto.

It would serve no useful purpose to burden this opinion with a summary of the evidence upon which these conclusions rest, for it in faith-

ful detail but follows that given in hearing after hearing before committees, public bodies and courts in the oil-producing States of this country and daily appearing in countless articles and interviews, inspired and uninspired, upon the condition of the oil industry. Indeed so importantly has this policy of proration as the cure for market glut been advanced, so currently and so widely debated as a matter of public concern has the necessity for its adoption been, so known to every man, that this court could fairly have taken judicial cognizance of the matters disclosed by the evidence; that with supply both actual and potential outrunning present demand, those interested in the oil business in this State not only financial, but as a matter of public and general concern have been first by private agreement, and latterly by invoking the aid of the Commission, endeavoring to put into effect for the purpose of limiting the supply, some plan of operation which in a way most acceptable to the operators generally, will effect curtailment, and that a general consensus of opinion in Texas has latterly centered upon "proration" as the means effective to this end.

It remains to inquire whether, under the facts found, the proration orders in question are invalid either as an attempt to exercise authority not granted by the Legislature, or if resting on legislative grant, whether they are unjust, unreasonable and void because violative of the constitutional guarantees to which plaintiffs appeal, or because constituting an unlawful interference with interstate commerce.

A word as to the Commission, the source and terms of its authority, and as to the nature and character of a suit against it, will serve to clearly point the basis of our decision.

Created originally for the regulation of railway rates and practices with authority to make rules, regulations and orders regarding same, its jurisdiction has been latterly extended by Act of the Legislature to the production and transportation of oil and gas. Its rules, orders and regulations while carrying prima facie validity, are yet subject to inquiry at the suit of persons believing themselves aggrieved, the statute, Article 6036b providing, "If any person * * * at interest be dissatisfied

with any rule, regulation or order adopted by the Commission in pursuance of the provisions of this Act, such dissatisfied party may file a petition setting forth the particular cause of objection thereto in a court of competent jurisdiction in Travis county against the Commission as defendant and such action * * * shall be tried and determined as other civil cases in said court. In all trials under this section the burden of proof shall rest upon plaintiff."

Plaintiff's suit, then, is not a class suit, but one under the statute in his own behalf, which he is entitled to maintain in the district court of the United States for the Western District of Texas for relief against the proration orders in question, if they are as to plaintiff, unreasonable and unjust. *Reagan vs. Farmers Loan and Trust Co.*, 154 U. S. 362.

The laws of the State of Texas, enacted to conserve the oil and gas resources of the State, are the source of the Commission's power to make and enforce the orders in question, and to them we must look. Those portions of the statutes pertinent here, defining waste, enjoining the conservation of oil and gas, vesting the Commission with authority over persons drilling and operating oil wells in Texas, and authorizing it to make rules and regulations for the conservation of oil and gas, and the prevention of waste thereof, are Articles 6014,¹ 6023² and 6029³.

Note 1:

Article 614 — "Waste." Neither natural gas nor crude petroleum shall be produced, transported, stored or used in such manner or under such conditions as to constitute waste; provided, however, this shall not be construed to mean economic waste.

The term "waste," in addition to its ordinary meaning, shall include permitting (a) escape into the open air of natural gas except as may be necessary in the drilling or operation of a well; (b) drowning with water of any stratum capable of producing oil or gas, or both oil and gas in paying quantities; (c) underground waste; (d) any natural gas well to wastefully burn; (e) the wasteful utilization of natural gas; (f) the creation of unnecessary fire hazards.

Note 2:

Article 6023—Jurisdiction. "Power and authority are hereby conferred

upon the Railroad Commission of Texas, over all common carrier pipe lines, conveying oil or gas in Texas, and over all oil and gas wells in Texas, and over all persons, associations or corporations owning or operating pipe lines in Texas, and over all persons, associations and corporations owning or engaged in drilling or operating oil and gas wells in Texas; and all such persons, associations and corporations and their pipe lines, oil and gas wells are subject to the jurisdiction conferred by law upon the Commission, and the Commission is authorized and empowered to make all necessary rules and regulations for the government and regulation of such persons.

Note 3:

Article 6029—Rules and Regulations. The Commission shall make and enforce rules and regulations for the conservation of oil and gas:

1. To prevent the waste of oil and gas in drilling and producing operations and in the storage, piping and distribution thereof.

2. To require dry or abandoned wells to be plugged in such way as to confine oil, gas and water in the strata in which they are found to prevent them from escaping into other strata.

3. For the drilling of wells and preserving a record thereof.

4. To require such wells to be drilled in such manner as to prevent injury to the adjoining property.

5. To prevent oil and gas and water from escaping from the strata in which they are found into other strata.

6. To establish rules and regulations for shooting wells and for separating oil from gas.

7. To require records to be kept and reports made by oil and gas drillers, operators and pipe line companies, and by its inspectors.

8. It shall do all things necessary for the conservation of oil and gas, whether here especially enumerated or not, and shall establish such other rules and regulations as will be necessary to carry into effect this law, and to conserve the oil and gas resources of the State.

Under the authority of these statutes the Railroad Commission has occupied the field assigned to it by making specific rules and regulations governing the drilling for, the production and transportation of oil and

gas with a view to preventing waste, as defined in the statutes, and injury to the lands of adjoining owners, and these rules, practices and regulations have been quite uniformly sustained. *Oxford Oil Co. vs. Atlantic Oil Co.*, 22 Fed. (2nd) 597; *Humble Oil Co. vs. Strauss*, 243 S. W. 528; *Gilmore vs. Straughan*, 10 S. W. (2nd) 589; *State vs. Jarmon*, 25 S. W. (2nd) 936; *Texas Commission. vs. Bass*, 10 S. W. (2nd) 586.

Plaintiffs point to the fact that the statutes of Texas have not authorized, but have forbidden the consideration in conservation orders of economic waste, and that no statute has undertaken to authorize as a legitimate method to prevent physical waste, proration or any similar plan. They declare that while the Commission undoubtedly has authority to make reasonable rules and regulations having a real and direct relation to the conservation of oil and gas, and the prevention of waste, which though limiting the owner in the use of his property are designed for and effective to carry out the legislative will, the proration orders in question are not such orders. That they were not promulgated to carry out the legislative policy as declared in the statutes, and are therefore not commands of a sovereign State, but mere voluntary attempts on the part of the Commission, in association with oil producers, purchasers and transporters of oil, to formulate and establish for the State, contrary to its long-established legislative policy forbidding combinations, agreements and arrangements in restraint of trade, and to effect the prices of commodities, the broad policy of so relating the supply of oil to the demand for it as to bring about and maintain the stabilization of the oil industry, through raising the price of oil both to the producer and the ultimate consumer and keeping it raised.

They say that this was to be accomplished by agreement and persuasion, as far as might be, but when these failed, by having the purchasers and transporters of oil boycott the recalcitrants, and the Commission proceed against them.

Those for the orders declare that the statute authorizing the suit puts upon plaintiffs the burden of proof to establish the unreasonableness of the orders. That until overthrown by

such proof they must stand. That the motives, the purposes, the ultimate desires of the Commission, of the oil companies, the oil committees and those who, working with them, have devised the scheme in question, have no bearing upon the validity of the regulation if as applied to the facts which it purports to fit, it validly regulates them. That in short, the Commission might have frankly declared that one of the purposes, or the main purpose, in mind was to reduce supply, if the rule as finally passed has the real and genuine effect to in a reasonable, fair and adequate way prevent physical waste and not merely accidentally incidental effect, as the result of shutting in production, of effecting some slight reduction in such waste.

Plaintiffs concede broadly that the motives, purposes and intent of the Commission are wholly immaterial if the complained of action is reasonably referable to its grant of powers, the conservation of oil, the prevention of physical waste, and in operation it has substantial relation to the granted power, even though that operation may accidentally or incidentally effect economic waste, a subject legislatively withdrawn from the Commission. They deny that the Commission, authorized as it was within limits to carry out a conservation policy against waste, as defined in the laws of the State, may, departing from that policy, establish a conservation policy of its own of the broadly economic kind in question here, with all the serious complications in which it is involved, the grave consequences which it entails, and make that policy effective against attacks by camouflaging words its real purpose and effect, or by pointing to some result in keeping with its powers which may incidentally or accidentally flow from it. *Siler vs. L. & N. R. R.*, 213 U. S. 175; *Minnesota vs. Barber*, 136 U. S. 313; *Brimmer vs. Rebman*, 138 U. S. 78; *Real Silk Hosiery vs. Portland*, 268 U. S. 325.

This is settled law where the validity of legislative acts, State or National, is in question. Presumptively valid though such acts are, courts, bound to give effect not to fictions, but to realities, may not in construing them, close their eyes to what all men can see. Disregarding pretense, subterfuge and chicanery, courts must, looking through form and sub-

stance, ascertain the true purpose of a statute not from its recitals of purpose, but from the operation and effect of it as applied and enforced. *Smith vs. Ry. Co.*, 181 U. S. 248; *Bailey vs. Drexel Fur. Co.*, 259 U. S. 20; *Lockner vs. New York*, 198 U. S. 64; *Meyer vs. Nebraska*, 262 U. S. 390; *Henderson vs. Mayor of N. Y.*, 92 U. S. 259; *Chy Lung vs. Freeman*, 92 U. S. 275.

Certainly when a subordinate body like the Railroad Commission of Texas undertakes as here to deal in a broadly restrictive way with the right of a citizen to produce the oil which under the laws of this State he owns, it must be prepared to answer his imperious query, "Is it not lawful for me to do what I will with mine own" by pointing to a clear delegation of legislative power. This must be found not in the recitative portions of its orders, for the Commission may not more than any other agent, lifting itself by its bootstraps, supply, by claiming, the power it does not have, but in the statutes themselves, which have created, which control and which are the source of the Commissions' power.

Especially must this be so when, as here, under the thinly veiled pretense of going about to prevent physical waste the Commission has, in co-operation with persons interested in raising and maintaining prices of oil and its refined products, set on foot a plan which, seated in a desire to bring supply within the compass of demand, derives its impulse and spring from, and finds its scope and its extent in the attempt to control the delicate adjustment of market supply and demand, in order to bring and keep oil prices up.

We have searched, but we cannot read in any legislative pronouncement support for what the Commission has done here. Authorized as we believe it to be to make rules and regulations reasonable and just, having a true and direct relation to the conservation of oil and gas, we find no authority for its launching upon the policy in question.

This policy of the artificial forcing of prices by governmental action, in co-operation with those in the oil industry interested in raising prices, by either stimulating demand or keeping supply in bounds has never been attempted in this State by the Legislature itself; on the contrary, it has

heretofore not only not established such policy, but has forbidden, by positive penal laws, the application of such artificial stimuli through private concert and agreement.

In the light of such long established policy, and of the language of the oil conservation statute itself, excluding from the statutory definition "economic waste," we think it plain that whether the Legislature could lawfully have exercised this power, either directly or through a delegation of it to the Commission, it has not only not confided the exercise of it to the Commission, but has flatly withheld such power from it.

In short, we believe that the orders in question are unreasonable and void as to plaintiffs because issued in the attempted exercise not of delegated, but of usurped powers. As usurpations, under the authority of the statutes of Texas authorizing this suit, we strike them down.

We find it unnecessary then to, indeed we may not in accordance with established law, inquire into the constitutional questions raised. *Siler vs. Louisville & N. R. R.*, 213 U. S. 175.

Let a decree in accordance with this opinion be prepared and filed.

IN COMMITTEE OF THE WHOLE HOUSE.

(Mr. Minor in the chair.)

On motion of Mr. Hardy, the House, at 9:40 o'clock a. m., resolved itself into a Committee of the Whole House for the purpose of further investigating the oil industry.

IN THE HOUSE.

(Mr. Minor in the chair.)

At 5:50 o'clock p. m., Mr. Minor, Chairman of the Committee of the Whole House, reported to the House that the Committee desired to rise, report progress and ask leave of the House to sit again at 9 o'clock a. m. tomorrow.

RESOLUTION SIGNED BY THE SPEAKER.

The Speaker signed, in the presence of the House, after giving due notice thereof and its caption had been read, the following enrolled resolution:

H. C. R. No. 4, Providing for a meeting of the Governors of the cotton-producing States.

RECESS.

On motion of Mr. Sherrill, the House, at 5:50 o'clock p. m., took recess to 9 o'clock a. m. tomorrow.

APPENDIX.

REPORTS OF THE COMMITTEE
ON ENROLLED BILLS.

Committee Room,
Austin, Texas, July 25, 1931.
Hon. Fred H. Minor, Speaker of the
House of Representatives.

Sir: Your Committee on Enrolled
Bills, to whom was referred

H. C. R. No. 5, Petitioning the In-
terstate Commerce Commission not
to allow increase in freight rates,

Have carefully compared same and
find it correctly enrolled.

COX of Lamar, Chairman.

Committee Room,
Austin, Texas, July 25, 1931.
Hon. Fred H. Minor, Speaker of the
House of Representatives.

Sir: Your Committee on Enrolled
Bills, to whom was referred

H. C. R. No. 4, Relating to calling
meeting of Governors of cotton-pro-
ducing States.

Have carefully compared same and
find it correctly enrolled.

COX of Lamar, Chairman.

EIGHTH DAY.

(Continued.)

(Tuesday, July 28, 1931.)

The House met at 9 o'clock a. m.,
and was called to order by Speaker
Minor.

HOUSE BILL ON FIRST READING.

The following House bill, intro-
duced today, was laid before the
House, read first time, and referred
to the appropriate committee, as fol-
lows:

By Mr. Young:

H. B. No. 22, A bill to be entitled
"An Act defining common purchasers
of natural gas, prohibiting discrimi-
nation; placing the enforcement of
the provisions of this act under the

Railroad Commission of Texas; pro-
viding for the promulgation of rules,
regulations and orders; providing for
appeal; providing penalties, and de-
claring an emergency."

Referred to Committee of the
Whole House.

IN COMMITTEE OF THE WHOLE
HOUSE.

(Mr. Minor in the chair.)

On motion of Mr. Hardy, the House
at 9:15 o'clock a. m., resolved itself
into a Committee of the Whole House
for the purpose of further investigat-
ing the oil industry.

IN THE HOUSE.

(Mr. Minor in the chair.)

At 10 o'clock a. m., Mr. Minor,
Chairman of the Committee of the
Whole House, reported to the House
that the Committee desired to rise,
report progress and ask leave of the
House to sit again at conclusion of
the address by Mr. Dobie.

ADDRESS BY MR. J. FRANK
DOBIE.

(In Joint Session.)

In accordance with a resolution
heretofore adopted providing for an
address by the Hon. J. Frank Dobie,
the honorable Senate, at 10 o'clock
a. m., appeared at the bar of the
House and, being admitted, occupied
seats along the aisle.

Lieutenant Governor Edgar Witt,
being invited, occupied a seat on the
Speaker's stand.

Mr. J. Frank Dobie, accompanied
by Mrs. Rountree, Mr. McCombs, Mr.
Hatchitt and Senators Woodruff,
Hornsby and Holbrook, committees on
the part of the House and Senate, ap-
peared at the bar of the House and,
being admitted, occupied seats on the
Speaker's stand.

Hon. Fred H. Minor, Speaker, called
the House of Representatives to or-
der.

The Senate was called to order by
Lieutenant Governor Edgar Witt.

Lieutenant Governor Witt then
presented Mrs. Lee J. Rountree, who
in turn introduced Mr. Dobie.

Mr. Dobie then addressed the joint
session and assemblage.

At the conclusion of the address
the Senate retired to its Chamber.